



Terms & Conditions

CONDITIONS OF CONTRACT governing all contracts for the sale or supply of goods by FX Fire and Safety Solutions Limited ('the Company').

In these conditions:- 'Buyer' means any person at whose request goods are supplied by the Company; and 'goods' means any goods or replacements therefore and any refurbished goods together with (in the case of contracts for the provision of services) any services/workmanship supplied to the Buyer under the contract. These conditions shall apply to every contract entered into with the Company except as varied by express agreement in writing signed by a director or authorised person on behalf of the Company. The headings are for convenience only and shall not affect construction of these Conditions.

Formation and Parties

- (a) The Buyer's order to the Company is an offer to enter into a contract upon these Conditions. Acceptance occurs and the contract is formed solely upon the Company despatching to the Buyer its Acknowledgement of Order or the Company commencing work on the order (whichever shall first occur). Any terms or conditions proffered at any time by the Buyer are hereby excluded. A quotation by the Company does not constitute an offer. Quotations given are valid only if in writing and may be withdrawn at any time by written notice from the Company. Unless a different period is specified on the Company's written quotation, a quotation is valid for 30 days from the date of issue of the quotation.
- (b) The Buyer shall not assign the benefit of the contract without the Company's prior written consent.
- (c) The contract is not cancellable by the Buyer without express written consent of a director or other authorised person on behalf of the Company.
- (d) If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred up to the time of cancellation together with reasonable amount by way of liquidated damages for breach of contract as specified by the Company, such sum being acknowledged by the Buyer as representing a genuine pre-estimate of the Company's loss of profit and not in any event to exceed 20% of the contract price.
- (e) No conduct of the Company shall constitute acceptance of any terms put forward by the Buyer unless the Company expressly agrees to them in writing.
- (f) No employee or agent of the Company has any authority to vary these terms & conditions orally or to make any representation on behalf of the Company as to their effect.

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(g) All variations in the terms & conditions are to be agreed in writing by a Director of the Company.

Price

(a) Unless otherwise specifically agreed by the Company in writing, the price of the goods shall be that stated in the Company's price list applicable to the goods.

(b) The Company reserves the right to vary the price of the goods without notice to take account of any variation in the cost of materials, labour, transport, duties, taxes, change of rates or any costs whatsoever the nature between the date of the contract and the date of delivery or completion of payment.

(c) Payment to the Company will always be required in Pounds Sterling, save where expressly agreed otherwise by a Director of the Company.

Delivery

(a) Delivery dates are estimates only. Time of delivery is not of the essence of the contract. Unless otherwise stated, delivery periods commence from date of the Company's acceptance of Buyer's order. The Company shall use its reasonable endeavours to deliver the goods by the stated delivery date, but may suspend or delay delivery and shall not be liable to the Buyer for any loss whatsoever in the event of late delivery or non-delivery of goods or any instalment owing to any occurrence whatsoever beyond its control. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

(b) The Company may at its option deliver or treat late delivery by instalments; each instalment shall constitute a separate contract on these Conditions.

(c) Delivery shall take place and risk shall pass upon the earliest of the following:-
(i) the Company handing the goods to the Buyer or its agent at the Company's premises; or
(ii) the goods leaving the Company's premises; or
(iii) on the eighth day following notification that the goods are ready for despatch; or
(iv) in the case of goods supplied at the time of a service visit by the Company upon the Company handing the goods to the Buyer or its Agent at the Buyer's premises;

(d) All prices are given by the Company on an ex works basis unless otherwise agreed. Where the Company agrees to deliver the goods to the Buyer's premises, the Company reserves the right to make reasonable charge for transport, packaging and insurance. The Company shall use reasonable endeavours to give to the Buyer prior notice of any such charges.

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(e) If the Buyer has failed to collect goods on the expiry of the seventh day following notification of readiness for despatch the Company shall be entitled to treat the contract as repudiated by the Buyer. Until the contract is so terminated the Company may, at its option, either store the goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the price. If the Company elects to treat the contract as repudiated in accordance with Condition it shall (without prior prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the goods and retain the proceeds of the sale.

(f) In the case of short delivery, the Company may at its own discretion either:-(i) make good the shortfall by one or more further deliveries; or(ii) reduce the contract price by the same proportion as the shortage.

(g) In the case of excess delivery, the Company will make arrangements for the excess to be returned to the Company at the Company's expense.

(h) The Buyer shall not be entitled to reject any delivery on the grounds of any excess or short delivery and shall pay the contract price or where the Company exercises the option to reduce the contract price proportionally, the reduced price in accordance with the relevant provision.

(i) The Company shall not be liable for any losses caused by excess or short delivery.

Loss or Damage in Transit

(a) The Company shall not be liable for loss or damage to goods in transit unless:-

(i) the company has agreed to effect delivery to a place other than the Company's premises;

and

(ii) the loss or damage occurs prior to arrival at delivery point, and either

(iii) in the case of all sales, the damage or shortage is reported within 7 days of arrival at delivery point.

(iv) in the case of total loss, non-arrival is notified to the Company within 7 days after despatch of advice note or invoice (whichever is the earlier).

Inspection

(a) The Buyer shall inspect the goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined"), subject to paragraph (b) below, be deemed to have accepted the goods as delivered.

(b) The Company shall not be liable for defects or shortages discoverable on reasonable inspection unless the Buyer notifies the Company before the expiry of 14 days after

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receipt, of any alleged defect or lack of conformity with the contract.

(c) The Company shall make good shortages notified to it under para 5(b) as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.

(d) The Company's liability for goods lost or damaged in transit shall in all circumstances be limited to (at the Company's option) the repair or replacement or crediting the Buyer with the invoice value of the goods in question.

Warranty

(a) In this condition "Warranty Period" shall mean:-

- (i) if the goods are of the type to which warranty conditions published by the Company and current at the time of the Buyer's order apply, the period specified in such published warranty conditions;
- (ii) in any other case, the period determined under paragraph (b) below;

(b) In the absence of any other warranty period specified in writing by the Company to the Buyer, the Warranty Period specified in this Condition 6 (b) shall apply, namely:-

- (i) in respect of portable fire extinguishers, subject to the goods being serviced by a trained operator in accordance with BS5306, a period of 5 years from the date of cylinder manufacture - Premium Range models only.
- (ii) in respect of goods supplied under a warranty claim, a period not exceeding the outstanding warranty period on the originally supplied item.
- (iii) in respect of any other case not referred to in (a), (b)(i) or (ii) above, a period of 12 months from the date of delivery or, if the goods are not of the Company's manufacture and the manufacturer offers in respect thereof a warranty period of less than 12 months, such warranty period as shall have been specified by the manufacturer.

(c) If within the Warranty Period a material defect in the goods shall be discovered and:-

- (i) the Buyer notifies the Company within 14 days after discovery, detailing particulars on the warranty claim form QC110 and either at its own expense and risk returns the goods to the Company; (at the Company's sole option) permits the Company to inspect the same; and
- (ii) such defect has arisen from faulty materials employed or workmanship carried out by the Company existing but not discoverable upon inspection at time of receipt, then the Company shall repair or replace or, at its option, credit the Buyer's account with the Company or refund to the Buyer the value of the item.

With respect to portable fire extinguishers, any refund will be subject to a consideration of the age of the cylinder and time already spent in service.

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(d) The Company's liability for defective goods is limited in all circumstances to (at the Company's option) delivery or replacements or crediting or refunding of the invoice value to the Buyer and the Buyer shall accept such of the aforementioned remedies as the Company shall proffer as being fulfilment of the Company's obligations under the contract.

(e) The Company's liability under this Condition applies only to defects appearing before the Buyer makes any modification or alteration or repair to the goods and whilst the goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling or processing by the Buyer, or accelerated deterioration resulting from injurious environmental conditions.

(f) Where the goods are sold under a consumer transaction, as defined by the Consumer Transaction (Restrictions on Statement Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

Items Supplied by the Buyer

The Buyer shall be liable for all drawings, specification and instructions issued to the Company with orders or pursuant to the contract and shall indemnify and keep indemnified the Company against all loss directly or indirectly arising out of any error in or omission from such drawings specifications and instructions, and against all costs claims demands and expenses whatsoever in respect of the infringement or possible infringement of any patent, copyright, registered design or other third party right arising out of the Company's use of such drawings, specifications or instructions.

Liability

(1) The Warranties given by the Company at Condition 6 are subject to the following conditions:-

(a) the Company shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Buyer;

(b) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company's approval;

(c) if the total price for the goods has not been paid by the due date for payment, the Company shall be under no liability under the warranties referred to at Condition 6, or any other warranty, condition or guarantee until the total price for the goods has been paid;

(d) the warranties contained at Condition 6 do not extend to parts, materials or equipment

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not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

(2) Subject as expressly provided in these Conditions and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

(3) Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Buyer by reason of any representation (other than fraudulent misrepresentation) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other items for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Buyer and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the goods, except as expressly provided in the conditions.

Retention of Title

(1) Until the Company has received payment in full of all sums owed to it on any account by the Buyer, whether arising out of this or any other contract, legal and beneficial title to the goods shall remain in the Company; such goods are referred to in this condition as "retained goods".

(2) Retained goods:-

(a) are held by the Buyer as fiduciary for the Company and the Buyer shall not pledge or in any way charge by way of security for any indebtedness any retained goods;

(b) shall be at the Buyer's risk, insured by the Buyer from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good condition and stored separately and clearly identifiable as the

Company's property and with all identifying marks intact and legible; and

(c) may, subject to (3) below be used or sold by the Buyer as fiduciary for the Company in the ordinary course of its business on the basis that the proceeds of sale shall be held in trust by the Buyer as agent for the Company absolutely and separate from the Buyer's own monies in a separate identifiable bank account.

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(3) The Buyer's powers of use and sale of retained goods shall terminate:-

(a) forthwith on notice from the Company if the Buyer is in default of any of its obligations under this or any other contract with the Company or if the

Company has reasonable doubts as to the ability or willingness of the Buyer to pay any sum to it on the due date;

(b) automatically upon the occurrence of any of the following:-

(i) if the Buyer causes a meeting of or makes any arrangement or composition with its creditors; or

(ii) if the Buyer becomes insolvent or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt (within the meaning of Section 268 of the Insolvency Act 1986) or being a company, appears unable to pay its debts (within the meaning of Section 123 of that Act);

(iii) if the Buyer has an Administrator or Administrative Receiver appointed over any of its assets or undertaking or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purposes of bona fide reconstruction or amalgamation of a solvent company);

(iv) if anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Buyer.

(4) The Company may at any time, on giving prior notice, enter the Buyer's premises for the purpose of inspecting retained goods and identifying them as the Company's property and the Buyer irrevocably authorises the Company to enter upon its premises for that purpose.

(5) Upon suspension, revocation or determination of the Buyer's power of sale and use under this Condition the Buyer shall place all the retained goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of the Buyer's premises, with or without vehicles, for the purpose of removing such goods.

(6) The repossession of retained goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights against the Buyer under the contract.

Payment

(a) Subject to satisfactory trade, bankers and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms are cash payment in full to be made within 30 days after the date of invoice. Unless otherwise specifically agreed in writing payment for export orders shall be by irrevocable letter of

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credit confirmed by a London Clearing Bank and issued under the Incoterms then in force. No discount or allowance will be made unless specifically stated by the Company in writing.

Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 3% per annum above the base rate of Lloyds TSB Bank PLC from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Buyer).

(b) Time for making payment shall be of the essence of the contract.

(c) The Company may at any time, in its absolute discretion, appropriate any payment made by the Buyer in respect of goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary of the Buyer.

(d) The Company shall be entitled to cancel the contract or to postpone any delivery until payment has been received in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date.

(e) The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering goods or any instalment.

(f) VAT will be charged at the rate ruling at the time of despatch of the goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).

(g) The Buyer may not at any time set off or make deductions from the price payable to the Company. (h) If the Buyer fails to pay in full for the goods delivered by the due date, the Company is entitled to bring an action for price notwithstanding the property may not have passed to the Buyer pursuant to Section 9.

Refurbished Goods

(a) In the event that the Buyer's order is for the refurbishment and re-supply to it of the Company's products, the Company shall use its reasonable endeavours to carry out such refurbishment.

(b) If in the sole opinion of the Company the used equipment submitted for refurbishment cannot be refurbished to an acceptable standard:-

(i) the Buyer's order shall be deemed to have been varied from the number of refurbished equipment ordered to that which the Company is able to refurbish; and

(ii) the Company may dispose of the used equipment in a manner which the Company deems appropriate without any liability whatsoever to the Buyer or, if so requested by the

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Buyer, return the equipment at the Buyer's expense.

(c) The Buyer shall indemnify the Company and keep the Company fully and effectively indemnified against all costs, claims, demands, expenses and liabilities arising from its having the Buyer's equipment in its possession prior to the commencement of refurbishment and in respect of the disposal of the equipment by the Company as referred in condition 11(b).

Intellectual Property

(1) If any claim is made against the Buyer that the goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the

Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in settlement of the claim, provided that:

(a) the Company is given full control of any proceedings or negotiations in connection with any such claim;

(b) the Buyer shall give the Company all reasonable assistance for the purpose of any such proceedings or negotiations.

(c) except pursuant to a final award the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);

(d) the Buyer shall do nothing which would or might vitiate any policy or insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under such policy or cover (which the Buyer shall use its best endeavours to do);

(e) the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs, if any, awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

(f) without prejudice to any duty of the Buyer at common law, the Company shall be entitled to require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.

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(2) The buyer shall not without the Company's permission resell any goods supplied under the Contract from which any label or logo has been allotted or altered.

Export Items

The following shall apply where goods are exported:

(a) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

(b) The Buyer shall be responsible for arranging for testing and inspection of the goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

(c) Payment of all amounts due to the Company shall be made against Proforma Invoice, prior to despatch from the Company's premises. All other payment arrangements will be agreed in writing prior to acceptance of any order.

Force Majeure

(a) The Company shall not be liable to the Buyer if unable to carry out any provision for the contract for any reason beyond its control including (but without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the contract.

(b) The Company shall notify the Buyer as soon as reasonably practicable after circumstances preventing performance arise. During the continuance of such a contingency the Company may, within its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, so far as prevented or hindered by such contingency, without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding, reduction or suspension.

(c) Should such contingency continue for more than three months either party may (subject to the Company repaying to the Buyer any advance payments made for undelivered goods and the Buyer paying for goods delivered) cancel the contract without further liability to the other.

No Waiver

No waiver of any of the Company's rights under the contract shall be effective unless in writing signed by a director or other authorised person on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of a Company's rights in relation to different circumstances or the recurrence of similar circumstances.

Notices

Any notices under these Conditions shall be properly given if in writing and sent by first class post or facsimile to the address of the intended recipient as stated in the contract or to such address as the Company and the Buyer from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice, on the expiry of 48 hours from time of posting and in the case of facsimile, on the expiry of 15 minutes from completion of transmission by the sender.

Construction and Jurisdiction

(a) English Law shall govern construction and operation of the contract and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts

(b) Each of these Conditions and each paragraph hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.